

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOLORES LUCERO,

Plaintiff,

v.

PHILIP LEWIS,

Defendant.

No. 2:24-cv-03116-DC-SCR

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff Dolores Lucero is proceeding pro se and accordingly this matter is referred to the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Before the Court are Defendant's motion to dismiss (ECF No. 14), Plaintiff's motion for sanctions (ECF No. 15), and Plaintiff's opposition and cross-motion (ECF No. 16). Plaintiff's motion for sanctions is DENIED. The Court recommends that Defendant's motion to dismiss be GRANTED and Plaintiff's opposition/cross-motion be DENIED.

I. Background and Procedural History

Plaintiff filed this action on November 12, 2024, alleging claims under 42 U.S.C. § 1983 against Defendant Phil Lewis ("Lewis") "in his official and individual capacity as a member of

1 the Gateway Unified School District Board.” ECF No. 1 at 1. Plaintiff alleges that “in or around
2 early 2023” she began participating in a recall campaign against Lewis. *Id.* at ¶ 8. Plaintiff
3 alleges that on November 27, 2023, in response to the recall campaign, Lewis issued a public
4 statement that contained false and misleading information, including that Plaintiff had previously
5 been convicted of felony election fraud. *Id.* at ¶ 10. On April 17, 2024, Plaintiff demanded that
6 Lewis issue a written retraction and public apology, but Lewis refused. *Id.* at ¶ 12. Plaintiff
7 asserts three legal claims: 1) First Amendment retaliation under § 1983; 2) defamation under
8 California state law; and 3) “abuse of power” under § 1983. *Id.* at 4-6.

9 On February 5, 2025, Lewis filed a motion to strike pursuant to California Code of Civil
10 Procedure § 425.16 and a motion to dismiss. ECF No. 14. The motion argues that Plaintiff’s
11 claim for defamation should be stricken, and Plaintiff’s § 1983 claims should be dismissed. ECF
12 No. 14-1. On February 14, 2025, Plaintiff responded by filing a motion for sanctions (ECF No.
13 15) and a combined “opposition” and “request for summary judgment” (ECF No. 16). The
14 motions were taken under submission without oral argument. ECF No. 26.

15 **II. Legal Standards for Anti-SLAPP motion and Rule 12(b)(6)**

16 **A. Anti-SLAPP motions**

17 A strategic lawsuit against public participation (“SLAPP”) seeks to chill or punish a
18 party’s exercise of constitutional rights to free speech and to petition the government for redress
19 of grievances. *See Rusheen v. Cohen*, 37 Cal.4th 1048, 1055-1056 (2006). The California
20 legislature enacted section 425.16 (“the Anti-SLAPP statute”), to provide a procedural remedy to
21 dispose of lawsuits brought to chill the valid exercise of those constitutional rights. *Id.* These
22 provisions apply to SLAPP suits brought against public entities and public employees. *See San*
23 *Ramon Valley Fire Prot. Dist. v. Contra Costa County Employees’ Ret. Ass’n*, 125 Cal.App.4th
24 343, 353 (2004) (“We have no doubt that a public official or government body, just like any
25 private litigant, may make an anti-SLAPP motion where appropriate.”).

26 The Ninth Circuit has held that a special motion to strike under California’s Anti-SLAPP
27 statute applies in federal court to state law claims. *See United States ex rel. Newsham v.*
28

.1 1 *Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 973 (9th Cir. 1999).¹ Defendants who
 2 succeed on such a motion in federal court may recover attorney's fees and costs. *Id.* In
 3 considering the Anti-SLAPP statute, courts are required to engage in a two-step process. "First,
 4 the court decides whether the defendant has made a threshold showing that the challenged cause
 5 of action is one arising from protected activity If the court finds such a showing has been
 6 made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the
 7 claim." *Taus v. Loftus*, 40 Cal.4th 683, 712 (2007). The defendant has the burden on the first
 8 issue to show that the claim arises from protected activity, and the plaintiff has the burden on the
 9 second issue of affirmatively demonstrating a probability of prevailing on the claim. *See*
 10 *Governor Gray Davis Com. v. American Taxpayers Alliance*, 102 Cal.App.4th 449, 457-60 (Cal.
 11 Ct. App. 2002).

12 **B. Rule 12(b)(6) legal standard**

13 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
 14 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir.
 15 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of
 16 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901
 17 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to
 18 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A
 19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
 20 the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*
 21 *Iqbal*, 556 U.S. 662, 678 (2009).

22

23

24 1 There is a Circuit split on the question of whether state law anti-SLAPP procedures apply in
 25 federal court. *See Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1337 (D.C. Cir. 2015) ("A
 26 federal court exercising diversity jurisdiction therefore must apply Federal Rules 12 and 56
 27 instead of the D.C. Anti-SLAPP Act's special motion to dismiss provision."); *Intercon Solutions,*
 28 *Inc. v. Basel Action Network*, 791 F.3d 729 (7th Cir. 2015) (affirming district court's decision that
 Washington's Anti-SLAPP statute could not be applied in federal court); *Los Lobos Renewable
 Power v. Americulture, Inc.*, 885 F.3d 659 (10th Cir. 2018) (declining to apply New Mexico anti-
 SLAPP statute).

1 In determining whether a complaint states a claim on which relief may be granted, the
2 court accepts as true all well-pleaded factual allegations in the complaint and construes the
3 allegations in the light most favorable to the plaintiff. *See Walker v. Fred Meyer, Inc.*, 953 F.3d
4 1082, 1086 (9th Cir. 2020). However, the court need not assume the truth of legal conclusions
5 cast in the form of factual allegations. *See Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071 (9th Cir.
6 2009). Rule 8(a)(2) requires a “short and plain statement of the claim showing that the pleader is
7 entitled to relief.” Fed. R. Civ. P. 8. While Rule 8(a) does not require detailed factual
8 allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me
9 accusation.” *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere “labels and
10 conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S.
11 at 555; *see also Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action,
12 supported by mere conclusory statements, do not suffice.”).

13 In ruling on a motion to dismiss under Rule 12(b)(6), the court is permitted to consider
14 material that is properly submitted as part of the complaint, documents that are not physically
15 attached to the complaint if their authenticity is not contested and the plaintiffs’ complaint
16 necessarily relies on them, and matters of public record. *See Lee v. City of Los Angeles*, 250 F.3d.
17 668, 688–89 (9th Cir. 2001).

18 **III. Analysis**

19 Lewis argues that this action is about free speech and that Plaintiff “apparently believes
20 the right belongs only to her.” ECF No. 14-1 at 8. Lewis contends he has been sued “for
21 statements made in his public response to her public recall petition against him” and that his
22 comments were protected speech. *Id.* Lewis requests that Count II, for defamation, be stricken
23 pursuant to the Anti-SLAPP statute. Lewis also argues that the entirety of the complaint fails to
24 state a claim. ECF No. 14-1 at 18. Lewis argues that the claims against him are barred by
25 Eleventh Amendment immunity, precluded by the *Noerr-Pennington* doctrine, and otherwise fail
26 to state a claim. ECF No. 14-1 at 18-25.

27 The Court begins by explaining why it is not recommending that Lewis be granted
28 immunity under the Eleventh Amendment and the *Noerr-Pennington* doctrine. It then explains

1 that Plaintiff's federal claims in Count I (First Amendment retaliation) and Count III ("abuse of
2 power" under §1983) fail to state a claim. Because those federal claims fail, there is no federal
3 question jurisdiction. The Court should therefore decline supplemental jurisdiction over the state
4 law defamation claim and abstain from addressing Lewis' anti-SLAPP motion.

5 **A. Eleventh Amendment Immunity**

6 Defendant argues that school districts are arms of the state, and immunity has also been
7 extended to governing boards, relying on *Belanger v. Madera Unified School Dist.*, 963 F.2d 248
8 (9th Cir. 1992) and *Brouillette v. Montague Elementary School Dist.*, 2014 WL 2453036 (E.D.
9 Cal. May 30, 2014). ECF No. 14-1 at 17. In *Belanger*, the Ninth Circuit stated that, "California
10 public schools have long been treated as state agencies under California law." *Id.* at 253. It is
11 further "well-settled that providing public education is a state function." *Id.* The Ninth Circuit
12 concluded that the school district is an agent of the state that performs state governmental
13 functions and is immune from suit under the Eleventh Amendment. *Id.* at 254; *see also Sato v.*
14 *Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 928 (9th Cir. 2017) (explaining that as agencies of
15 the state, school districts are immune under the Eleventh Amendment from private damages or
16 suits for injunctive relief). In *Brouillette* the court stated: "And to the extent that a school board's
17 authority is coextensive with the authority of a school district under state law, a school board in
18 California is likewise a state agency for purposes of the Eleventh Amendment." 2014 WL
19 2453036 at *2.

20 Lewis is not a school district or a school governing board. However, Lewis is a member
21 of the district board, and Plaintiff alleges that at all relevant times he was acting "in his official
22 capacity as a public official." ECF No. 1 at ¶ 7. In *Eaglesmith v Ward*, 73 F.3d 857 (9th Cir.
23 1995), the Ninth Circuit held that the Mendocino County superintendent of schools was entitled
24 to Eleventh Amendment immunity for claims brought against him in his official capacity. Thus,
25 if the school board is a state agency, and the claims against Lewis are only for actions taken in his
26 official capacity, it would appear the claims are precluded by Eleventh Amendment immunity.
27 However, elsewhere in the complaint Plaintiff asserts that the claims are against Lewis "in his
28 official and individual capacity." ECF No. 1 at 1. Although there appears to be some merit to

1 Lewis' Eleventh Amendment defense as to claims asserted against him in his official capacity, the
2 Court need not fully resolve this question as Plaintiff otherwise fails to state a claim under Counts
3 I and III.

4 **B. *Noerr-Pennington* Doctrine**

5 Lewis argues that he is entitled to immunity under the *Noerr-Pennington* doctrine. ECF
6 No. 14-1 at 14. Under the *Noerr-Pennington* doctrine, those who petition departments of the
7 government for redress are generally immune from liability for their petitioning conduct. *See*
8 *Empress LLC v. City and County of San Francisco*, 419 F.3d 1052, 1056 (9th Cir. 2005). This
9 immunity also extends to conduct "incidental" to valid petitioning conduct. *Sosa v. DirectTV,*
10 *Inc.*, 437 F.3d 923, 934 (9th Cir. 2006). Although the doctrine originated in the antitrust context,
11 "Noerr-Pennington" immunity now applies to claims under § 1983 that are based on the
12 petitioning of public authorities." *Empress LLC*, 419 F.3d at 1056.

13 Here, Lewis is a state actor and contends that his "act of filing a response regarding the
14 recall campaign with the County Clerk was an exercise of his right to petition the government."
15 ECF No. 14-1 at 14. *Noerr-Pennington* can apply to government actors who are acting in their
16 official capacities. *See Comm. to Protect our Agric. Water v. Occidental Oil & Gas Corp.*, 235
17 F.Supp.3d 1132, 1158-59 (E.D. Cal. 2017), *citing Manistee Town Ctr. v. City of Glendale*, 227
18 F.3d 1090, 1094 (9th Cir. 2000). "However, government actors are only protected by *Noerr-*
19 *Pennington* if they engage in activity that is properly considered petitioning activity or
20 sufficiently related to petitioning activity." *Comm. to Protect our Agric. Water*, 235 F.Supp.3d at
21 1159 (internal citation and quotation omitted). "The Ninth Circuit has generally not interpreted
22 *Noerr-Pennington* to extend immunity to state actors engaging with private entities who are
23 themselves exercising petitioning rights." *Id.* (citing cases). While Lewis characterizes his
24 conduct as submitting a response to the County Clerk in the context of a recall campaign, the
25 complaint alleges that Lewis issued a public statement against her that accused her of circulating
26 false information and having a conviction for felony election fraud. ECF No. 1 at 10. Although
27 further factual development may demonstrate that Lewis' statement was petitioning conduct, or
28 incidental to the petitioning conduct, based purely on the allegations in the complaint it is not

.1 clear that Lewis was engaged in petitioning conduct. On the current record, *Noerr-Pennington*
2 does not immunize Lewis.

3 **C. Failure to State a Claim**

4 **1. Count I – First Amendment Retaliation**

5 Plaintiff alleges that her participation in a recall campaign against Lewis was an exercise
6 of her rights under the First Amendment. ECF No. 1 at ¶ 16. Plaintiff alleges that Lewis'
7 "defamatory statements and retaliatory actions" were taken in response to her protected activity in
8 order to chill her exercise of free speech. *Id.* at ¶ 17. The alleged retaliatory action is that Lewis
9 "issued a public statement accusing Plaintiff of circulating misleading and false information and
10 alleging that Plaintiff had previously been convicted of felony election fraud." *Id.* at ¶ 10.

11 The elements of a First Amendment claim can vary depending on the context. In a case
12 like this one that does not involve a prison or employment-related retaliation, a plaintiff must
13 show: 1) she engaged in a constitutionally protected activity; 2) defendants' actions would chill a
14 person of ordinary firmness from continuing to engage in protected conduct; and 3) the protected
15 activity was a substantial or motivating factor in defendants' conduct. *See Sampson v. County of*
16 *Los Angeles*, 974 F.3d 1012, 1019 (9th Cir. 2020). A plaintiff "must establish that defendants'
17 retaliatory animus was the but-for cause of her injury, meaning that the adverse action against her
18 would not have been taken absent retaliatory motive." *Id.* (internal citations and quotations
19 omitted).

20 Plaintiff's allegations as to her protected activity are somewhat vague. She alleges that in
21 "early 2023" she "began participating in a recall campaign." ECF No. 1 at ¶ 8. At other points in
22 the complaint she states she "actively participated[.]" *Id.* at ¶ 6. Plaintiff never describes what
23 this "participation" entailed. The Court will assume for the purposes of this analysis that Plaintiff
24 could meet this element by including more detailed allegations, and that her efforts in the recall
25 campaign constitute constitutionally protected activity.

26 As to the second element, the alleged conduct by Lewis would not chill a person of
27 ordinary firmness from continuing to engage in protected conduct. "Because it would be unjust
28 to allow a defendant to escape liability for a First Amendment violation merely because an

1 unusually determined plaintiff persists in his protected activity, ... the proper
 2 inquiry asks whether an official's acts would chill or silence a person of ordinary firmness from
 3 future First Amendment activities." *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283,
 4 1300 (9th Cir. 1999) (citation and quotation omitted). Plaintiff alleges that an elected official
 5 made a public statement concerning her in response to her political activity of participating in a
 6 recall campaign against him.

7 "Retaliation claims involving government speech warrant a cautious approach by courts
 8 because restricting the ability of government decisionmakers to engage in speech risks interfering
 9 with their ability to effectively perform their duties and ignores the competing First Amendment
 10 rights of the officials themselves." *Greisen v. Hanken*, 925 F.3d 1097, 1113 (9th Cir. 2019)
 11 (internal citation and quotation omitted). Thus, the Ninth Circuit has "on several occasions
 12 rejected retaliation claims based exclusively on retaliatory speech, noting that 'it would be the
 13 height of irony, indeed, if mere speech, in response to speech, could constitute a First Amendment
 14 violation.'" *Id.* at 1113, *citing Nunez v. City of Los Angeles*, 147 F.3d 867, 875 (9th Cir. 1998).
 15 The "marketplace of ideas is undermined if public officials are prevented from responding to
 16 speech of citizens with speech of their own." *Mulligan v. Nichols*, 835 F.3d 983, 989 (9th Cir.
 17 2016), *citing Bond v. Floyd*, 385 U.S. 116, 136 (1966) ("The interest of the public in hearing all
 18 sides of a public issue is hardly advanced by extending more protection to citizen-critics than to
 19 legislators.").

20 In *Greisen*, the Ninth Circuit recognized that sometimes retaliatory speech can serve as a
 21 basis for liability, and described two such circumstances. 925 F.3d at 1113-15. First, a
 22 "retaliation claim may be based on retaliatory speech when that speech is part of a campaign of
 23 harassment designed to burden the plaintiff's protected expression." *Id.* at 1113-14. Second,
 24 retaliatory speech may be the basis for a retaliatory claim when "it intimates that some form of
 25 punishment or adverse regulatory action would follow." *Id.* at 1114.

26 Plaintiff alleges a single incident of retaliatory speech – that on November 27, 2023,
 27 Lewis made a public statement claiming that she had circulated false and misleading information
 28 and had been convicted of an election-related offense. ECF No. 1 at ¶ 10. Plaintiff alleges that

1 five months later, she demanded that Lewis retract the statement and issue an apology, but he
 2 refused. *Id.* at ¶ 12. Plaintiff has not alleged a campaign of harassment or that she was threatened
 3 with punishment or adverse regulatory action. Plaintiff alleges that Lewis' statement was
 4 defamatory, but that alone is insufficient. In *Gini v. Las Vegas Metropolitan Police Dept.*, 40
 5 F.3d 1041, 1045 (9th Cir. 1994), the Ninth Circuit stated, in discussing a defamation claim, that
 6 "damage to reputation is not actionable under § 1983 unless it is accompanied by some more
 7 tangible interests" and that for any defamation or damage flowing from it, plaintiff "has a tort
 8 remedy under state law, not under the First Amendment." *Mulligan* reiterated this rule, stating:
 9 "We noted that an act of defamation by government officials was insufficient to create a right to a
 10 remedy under the First Amendment in the absence of state action affecting a plaintiff's rights,
 11 benefits, relationship or status with the state." 835 F.3d at 989 (cleaned up).

12 The "something more" that is required beyond mere defamation is described in cases such
 13 as *Allen v. Scribner*, 812 F.2d 426 (9th Cir. 1987) and *Greisen*. In *Allen*, the plaintiff was
 14 removed from his work project, reassigned, and endured multiple incidents of harassment. In
 15 *Greisen*, the court stated the "case falls squarely within *Allen*," and the "retaliation claim involves
 16 something more than defamation by a public official." 925 F.3d at 1114. The allegations against
 17 the defendant in *Greisen* "included not only defamatory communications with the press but also a
 18 suspension, an indefinite leave, a one-sided gag order and the instigation of three spurious
 19 investigations."² *Id.* Plaintiff's claim fails, given the absence of a campaign of harassment,
 20 threats of punishment or adverse regulatory action, or other state action affecting her rights.

21 Having determined that defamation alone does not give rise to a First Amendment
 22 retaliation claim, it is technically unnecessary to analyze whether Lewis plausibly defamed
 23 Plaintiff. However, even assuming for the sake of argument that defamation alone could be
 24 sufficient, Plaintiff's claim would still fail because the allegation that Lewis defamed Plaintiff
 25 does not appear plausible. The complaint states Lewis "issued a public statement accusing

27 ² While the cited cases concern public employee speech, the "chilling" inquiry is similar to the
 28 one in this case: is the retaliation "reasonably likely to deter [the individual] from engaging in
 constitutionally protected speech." *Coszalter v. City of Salem*, 320 F.3d 968, 970 (9th Cir. 2003)

1 Plaintiff of circulating misleading and false information and alleging that Plaintiff had previously
 2 been convicted of felony election fraud.” ECF No. 1 at ¶ 10. Defendant filed a copy of the
 3 statement and asks that the Court take judicial notice. ECF No. 14-2. Plaintiff does not oppose
 4 that judicial notice, and also filed the same statement, confirming it is in fact the statement at the
 5 heart of this case. ECF No. 16 at 3, 7.³ The statement does not mention Plaintiff by name, but
 6 states, in reference to a recall effort against Lewis:

7 One of them made mistakes and resigned. An election was held to fill that vacancy. The
 8 person behind this recall backed the candidate that lost. She’s now trying to counter that
 9 by recalling me. She doesn’t reside in our voting jurisdiction. The information she is
 10 circulating is misleading and largely false. She’s previously been convicted of felony
 11 election fraud.

12 ECF No. 16 at 7; ECF No. 14-2 at 5. Plaintiff is allegedly the “person behind this recall.”
 13 Accordingly, the statements concerning her are that she: 1) did not reside in the jurisdiction; 2)
 14 circulated misleading and “largely false” information; and 3) was previously convicted of “felony
 15 election fraud.”

16 The portion of the statement that Plaintiff appears to find most objectionable is that she
 17 was convicted of election fraud. A publication that “[c]harges any person with crime, or with
 18 having been indicted, convicted, or punished for crime,” is considered defamatory per se under
 19 California law. *Crowe v. County of San Diego*, 608 F.3d 406, 442 (9th Cir. 2010), citing Cal.
 20 Civ. Code § 46(1). However, “truth is a complete defense” to civil liability for defamation per se.
 21 See *Gravitt v. Brown*, 74 Fed.App’x 700, 705 (9th Cir. 2003), citing *Ellenberger v. Espinosa*, 30
 22 Cal.App.4th 943, 952-53 (1994). “The defendant does not need to prove the literal truth of every
 23 word in the challenged statement; the defense is complete so long as the imputation is

24
 25 ³ Plaintiff asks the Court to grant summary judgment on the basis of that statement. As explained
 26 below, summary judgment in Plaintiff’s favor is entirely unwarranted. Regardless, under the
 27 “incorporation by reference” doctrine, a court may consider documents referenced extensively in
 28 the complaint and accepted by all parties as authentic. See *Van Buskirk v. Cable News Network,
 Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). Under this doctrine, the Court “may look beyond the
 pleadings without converting the Rule 12(b)(6) motion into one for summary judgment.” *Id.* The
 statement is fairly incorporated by reference and considered here.

1 substantially true so as to justify the gist or sting of the remark.” *Tillkey v. Allstate Ins. Co.*, 56
2 Cal.App.5th 521, 550-51 (2000) (cleaned up).

3 Judicially noticeable documents show that Plaintiff has in fact been convicted of a felony
4 offense that was related to electoral politics. Plaintiff’s conduct underlying her conviction for
5 Penal Code § 134, preparing false documentary evidence, is described here:

6 At issue are declarations containing false information collected by defendant, Dolores
7 Maria Lucero, to be used in court to support her request for injunctive relief to halt a
8 petition drive to recall her from her position as a city council member for the City of
9 Shasta Lake (Shasta Lake). Defendant also submitted the declarations to law
10 enforcement, and an investigation against a person involved in the recall effort was
initiated as a result. Defendant duped several people who had signed the recall petition
into signing these declarations. A jury convicted defendant of violating section 134 for
this conduct.

11
12 *People v. Lucero*, 41 Cal.App.5th 370, 379 (Cal. Ct. App. 2019). The “imputation” that Plaintiff
13 had been convicted of “felony election fraud” was “substantially true.” *Tillkey*, 56 Cal.App.5th at
14 550. Penal Code § 134 is a felony offense, Plaintiff’s conviction thereunder involved conduct
15 that would be fairly characterized as fraudulent, and Plaintiff’s conduct occurred in the course of
16 a recall effort. While a recall effort is not literally an election, it does involve electoral politics.
17 In any event, the technical distinction between a recall effort and an election is immaterial to the
18 defamatory nature of the statement—it is the words “felony” and “fraud” that would make it
19 defamatory. Thus, even if defamation alone were sufficient to establish a retaliation claim,
20 Plaintiff does not plausibly allege defamation.

21 Plaintiff fails to meet the second element of her claim for First Amendment retaliation –
22 she has not alleged the “something more,” beyond her assertion that the claim was defamatory.
23 She has merely alleged speech in response to speech. Count I fails to state a claim.

24 2. Count III – Abuse of Power under § 1983

25 Plaintiff’s Count III alleges that Lewis defamed and retaliated against her, and that
26 such use of his official position was an “abuse of power.” ECF No. 1 at ¶¶ 24-27. This Count is
27 redundant. It repeats her allegations of retaliation and defamation and attempts to turn them into
28 an additional constitutional tort. “[Section] 1983 ‘is not itself a source of substantive rights,’ but

1 merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v.*
 2 *Connor*, 490 U.S. 386, 393–94 (1989). A plaintiff alleging a claim under § 1983 must plead that
 3 (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the
 4 Constitution or federal statutes. *Benavidez v. County of San Diego*, 993 F.3d 1134, 1144 (9th Cir.
 5 2021).

6 Plaintiff cannot merely assert “abuse of power” as a claim under § 1983. The only
 7 Constitutional right mentioned is the First Amendment, which is already the basis of her Count I.
 8 To the extent that any violation of the U.S. Constitution by a public official is an abuse of power,
 9 Plaintiff fails to state a claim under Count III for the same reasons discussed above in Count I.

10 **3. Count II – Defamation**

11 Having determined that Plaintiff fails to state a claim in her two counts under § 1983, the
 12 Court finds it is appropriate to decline supplemental jurisdiction over the state law claim for
 13 defamation. The decision of whether to exercise supplemental jurisdiction over state law claims
 14 after the federal claims have been dismissed lies within the district court’s discretion. *See Foster*
 15 *v. Wilson*, 504 F.3d 1046, 1051-52 (9th Cir. 2007). Generally, when federal claims are dismissed
 16 well before trial, pendent state law claims should be dismissed as well. *See Campos v. Fresno*
 17 *Deputy Sheriff’s Assoc.*, 535 F.Supp.3d 913, 930 (E.D. Cal. 2021), *citing Religious Tech. Ctr. v.*
 18 *Wollersheim*, 971 F.2d 364, 367-68 (9th Cir. 1992). The Court recommends declining to exercise
 19 supplemental jurisdiction over Plaintiff’s state law defamation claim.

20 **C. Plaintiff’s Motion for Sanctions (ECF No. 15)**

21 Plaintiff’s motion states that she seeks sanctions pursuant to Federal Rule of Civil
 22 Procedure 11 and 28 U.S.C. § 1927. Plaintiff’s motion is largely conclusory and provides no
 23 meaningful basis for sanctions. Plaintiff offers two purported examples of defense counsel’s
 24 alleged misconduct. Plaintiff first argues that “Defendant has improperly introduced Plaintiff’s
 25 2012 conviction in an attempt to intimidate and discredit her, despite it having no relevance to
 26 current claims.” ECF No. 15 at 2. This point is entirely meritless. Plaintiff *herself* put at issue
 27 her conviction in the complaint, which accuses Lewis of falsely commenting on that conviction.
 28 Defendant merely asked that the Court take judicial notice of the California Court of Appeal

1 decision in *People v. Lucero*, 41 Cal.App.5th 370 (Cal. Ct. App. 2019), which affirmed her
2 conviction. That request for judicial notice of a relevant court decision was proper.

3 Plaintiff then argues there is an improper conflict of interest because attorney Lozano
4 Smith “represents both the Shasta County Office of Education and multiple small school districts,
5 including Gateway Unified and Oak Run Elementary, while defending Phil Lewis.” ECF No. 15
6 at 2. This argument is also meritless. Lewis is not represented by Lozano Smith. Lewis is
7 represented in this action by Kristen Caprino of Johnson Schachter & Lewis.

8 Defendant, in response to the motion, argues that pursuant to Rule 11(c)(2) the Court
9 should award Defendant attorney’s fees as the prevailing party on this motion. ECF No. 18 at 7-
10 8. In consideration of Plaintiff’s pro se status, the Court will decline the imposition of an award
11 of attorney’s fees. However, Plaintiff is cautioned that the filing of future frivolous motions may
12 result in the imposition of appropriate sanctions. Plaintiff’s motion for sanctions (ECF No. 15) is
13 DENIED.

14 **D. Plaintiff’s opposition and request for summary judgment (ECF No. 16)**

15 The Court has discussed Plaintiff’s opposition in the above analysis discussing Lewis’
16 motion to dismiss. To the extent the opposition brief requests summary judgment, it is
17 procedurally improper. As argued by Lewis, to the extent the opposition brief is a motion, it is
18 not properly noticed as required by Local Rule 230(b) and it fails to include a statement of facts
19 as required by Local Rule 260(a). Further, Plaintiff is not entitled to summary judgment as the
20 Court finds that Plaintiff fails to state a federal claim. The Court recommends that this motion be
21 DENIED.

22 **IV. Leave to Amend**

23 The Court has considered Plaintiff’s pro se status and whether she should be granted leave
24 to amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (“[a] district court should not
25 dismiss a pro se complaint without leave to amend unless it is absolutely clear that the
26 deficiencies of the complaint could not be cured by amendment.”). The Court has also considered
27 Plaintiff’s opposition and motion for summary judgment (ECF No. 16) in evaluating whether she
28 should be given leave to amend to plead something more than defamation in support of her First

.1 Amendment claim. The opposition, which Plaintiff also captions an affirmative motion for
2 summary judgment, does not contain facts supporting the “something more” that would be
3 required to make out a plausible retaliation claim. Instead, Plaintiff repeats in substance the
4 allegations in the complaint, that Lewis “falsely accused Plaintiff of felony election fraud, causing
5 irreparable harm to her reputation and deterring further political participation.” ECF No. 16 at 2.
6 This is a speech-in-response-to-speech case. Granting Plaintiff leave to amend her First
7 Amendment retaliation claim would be futile. The Court recommends Plaintiff’s claims against
8 Lewis be dismissed without leave to amend.

9 **V. CONCLUSION**

10 **IT IS HEREBY ORDERED:**

11 1. Plaintiff’s Motion for Sanctions (ECF No. 15) is DENIED.

12 **IT IS HEREBY RECOMMENDED that:**

13 1. Defendant’s Motion to Dismiss (ECF No. 14) be GRANTED, and that the federal
14 claims be dismissed for failure to state a claim without leave to amend; and
15 2. The Court decline supplemental jurisdiction over the state law defamation claim and
16 dismiss it without prejudice;
17 3. Plaintiff’s opposition and cross-motion for summary judgment (ECF No. 16) be
18 DENIED; and
19 4. The Clerk be directed to enter Judgment and close this file.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen days**
22 after being served with these findings and recommendations, either party may file written
23 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
24 Findings and Recommendations.” The parties are advised that failure to file objections within the
25 ////
26 ////
27 ////
28 ////

.1 specified time may result in waiver of the right to appeal the district court's order. *Martinez v.*
2 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: August 11, 2025

4
5
6



7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE